

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KIRBY KNIGHT, et al.,

Plaintiffs,

Hon. Janet T. Neff

v.

Case No. 1:09-cv-00973

ST. JUDE MEDICAL,

Defendant.

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**REPORT AND RECOMMENDATION**

This matter is before the Court on Defendant's Fed. R. Civ. P. 12(b)(6) Motion to Dismiss (Dkt. 6), in this matter which was referred to the undersigned by the Honorable Janet T. Neff. On March 25, 2010 (Dkt. 13) the undersigned ordered that Plaintiffs would be allowed to file an amended complaint now that counsel, William J. Donoghue, Jr., had appeared on behalf of Plaintiffs. It is therefore recommended that Defendant's motion to dismiss (Dkt. 6) be **dismissed without prejudice** pending filing of the amended complaint and corresponding responsive pleading.

Respectfully submitted,

Date: March 25, 2010

/s/ Ellen S. Carmody  
ELLEN S. CARMODY  
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within 14 days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).